

Message Text

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C O N F I D E N T I A L STATE 031087

E.O. 11652: GDS

TAGS: CGEN, PFOR, GE, FR, GW, US

SUBJECT: US/GDR CONSULAR DISCUSSIONS

SUMMARY: NATIONALITY PROBLEM SURFACED VERY QUICKLY IN ABOVE DISCUSSIONS. WE HAVE INFORMED EAST GERMANS THAT WE CANNOT ACCEPT ANY DEFINITION OF NATIONALITY, AND THEY HAVE TOLD US THEY CANNOT ACCEPT ANY CONSULAR CONVENTION WITHOUT IT. END SUMMARY.

1. DURING FINAL HOUR OF FEB 10 TALKS, US SIDE (DAVIS) BROACHED NATIONALITY ISSUE AS POSED IN ARTICLE I (2) OF GDR DRAFT. WE EXPLAINED OUR POSITION AS FOLLOWS: (A) USG CANNOT ACCEPT INCLUSION IN CONSULAR AGREEMENT OF ANY GENERAL DEFINITION OF NATIONALITY. (B) THERE IS NO NEED OF SUCH DEFINITION. WE HAVE NOT CUSTOMARILY INCLUDED ANY DEFINITION IN OUR BILATERAL AGREEMENTS, NOR IS ANY INCLUDED IN THE VIENNA CONVENTION. IT HAS NEVER BEEN SUGGESTED THAT

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SUCH A DEFINITION IS NECESSARY TO THE FUNCTIONING OF A

CONSULAR AGREEMENT. (C) IN US VIEW, IT IS COMPLEXITY OF NATIONALITY QUESTION AND ITS RELATION TO INTERNATIONAL LAW WHICH HAVE LED TO AVOIDANCE IN CONSULAR CONVENTIONS OF ANY GENERAL DEFINITIONS OF "NATIONAL". THIS IS ESPECIALLY TRUE OF DEFINITIONS WHICH EXCLUDE INTERNATIONAL LEGAL RULES AND CRITERIA.

2. INITIAL GDR RESPONSE (KLOBES) WAS ALONG SIMILARLY NEUTRAL LINES. AS REPEATED SEVERAL TIMES TO END OF DAY THIS CONSISTED OF: (A) WE DEFINE EVERYTHING ELSE IN TREATY, WHY NOT NATIONALITY? (B) INTERNATIONAL LAW DOES NOT PROHIBIT A STATE FROM DEFINING ITS OWN NATIONALITY. THIS IS NOT A FUNCTION OF INTERNATIONAL LAW, THEREFORE THERE CAN BE NO CONFLICT. (C) DEFINITION WOULD AVOID MISUNDERSTANDINGS.

3. AFTER THE FOREGOING, KLOBES SLIPPED INTO POLITICAL SUBSTANCE OF HIS CASE. HE ASKED WHETHER USG ACCEPTED EXISTENCE OF GDR NATIONALITY. WE REPLIED THAT WE ACCEPTED IT IN ACCORDANCE WITH CRITERIA AND PRACTICES OF INTERNATIONAL LAW. HOWEVER, WE SAW NO NEED TO DEFINE IT.

4. KLOBES THEN ACCUSED US OF DEFINING FRG NATIONALITY AS GERMAN, NOT IN THE CONSULAR AGREEMENT, BUT IN OUR TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION (FCN). AFTER AN OBSCURE DISCUSSION, IT DEVELOPED THAT HE WAS REFERRING TO LANGUAGE IN PROTOCOL OF FCN TREATY WHICH SPECIFIED THAT CERTAIN FRG DOCUMENTATION DESIGNATING PERSONS AS "GERMAN NATIONALS" WOULD ESTABLISH THAT A PERSON WAS A NATIONAL OF THE FRG FOR PURPOSES OF THE CONVENTION. HE TALKED ABOUT ARTICLE 116 OF FRG BASIC LAW, AND WITH FLAWED DRAMATICS, ACCUSED US OF REGARDING GDR TEAM AS "EIGHT DUAL NATIONALS". IN REPLY, WE INSISTED THAT THE FCN TREATY ONLY LISTED ACCEPTABLE DOCUMENTATION, DESCRIBED IT FACTUALLY, AND DID NOT DEFINE NATIONALITY. WE DID NOT CONSIDER GDR DIPLOMATS TO BE DUAL NATIONALS, THE FACT THAT WE KNEW THE CONTENTS OF ARTICLE 116 DID NOT IMPLY THAT.

5. WE MADE ADDITIONAL POINT THAT WE WERE ESPECIALLY DETERMINED TO AVOID DEPARTING FROM NORMAL PRACTICE
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BECAUSE DEFINITIONS OF NATIONALITY, AS KLOBES POINTED OUT, WOULD HAVE POLITICAL IMPLICATIONS WHICH WE THOUGHT SHOULD BE LEFT ASIDE FROM A PRACTICAL DOCUMENT. WE REJECTED IDEA THAT DEFINITION WOULD SIMPLIFY THINGS, SINCE ON CONTRARY IT WOULD ONLY COMPLICATE THEM.

6. KLOBES AGREED THAT GDR HAD NEVER "RATIFIED" ANY TREATY ON CONSULAR MATTERS WITH DEFINITION OF NATIONALITY. BUT

HE ASCRIBED THIS TO FACT THAT TREATIES WERE WITH COUNTRIES IN WHICH "FRG CLAIMS VIOLATIVE OF INTERNATIONAL LAW TO REPRESENT GDR NATIONALS" WERE NEVER RAISED. HOWEVER WITH USA, THE GDR COULD NOT CONCLUDE ANY CONVENTION WITHOUT A DEFINITION. SINCE US SIDE SAID IT COULD NOT ACCEPT ANY DEFINITION, AND GDR HAD TO HAVE ONE, THIS LEFT US IN "DILEMMA" RE NEGOTIATIONS. THIS WAS AT CLOSE OF DAY.

7. WE SAID THAT WE HAD NO PROPOSALS TO RESOLVE THIS DILEMMA. WE SUGGESTED IT MIGHT BE USEFUL TO BYPASS THE NATIONALITY QUESTION, AND PROCEED TO SEE WHAT COMMON AREAS OF AGREEMENT WE HAD. WITHOUT SPECIFICALLY RESPONDING TO SUGGESTION, GDR TEAM AGREED TO MEETING TIME FOR NEXT SESSION ON FEB. 11. INGERSOLL

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